

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ABRAHAM KAFF, ARI PFEFFER and
RAQUEL JAGER on behalf of themselves and
all other similarly situated consumers

Plaintiffs,

vs.

NATIONWIDE CREDIT, INC.

Defendant.

CLASS ACTION

NO. 13-cv-5413 (SLT-PK)

**Class Counsel's Supplemental Memorandum In Support of their
Petition for Fees and Costs**

Class Counsel submits this supplemental briefing in support of the petition for fees and costs pursuant to this Court's Order of February 15, 2017. Class Counsel incorporates fully herein their fee petition filed on August 11, 2016 (Dkt No. 51), and their Memorandum in Support of Class Counsel's fees filed on October 19, 2016 (Dkt No. 60). The attorneys that will be sharing in the fee award in this case are Edelman, Combs, Lattuner & Goodwin, LLC, Maxim Maximov, LLP and Adam Fishbein, who all collectively represented the plaintiffs and the class members.

The *Kaff v. Nationwide* Action (1:13-cv-05413) was commenced on September 30, 2013. Subsequently, the *Jager v. Nationwide* Action (1:15-cv-01183) was commenced on March 6, 2015. Thereafter, the *Pfeffer v. Nationwide* Action (1:15-cv-01192) was commenced on March 8, 2015. The *Kaff*, *Jager* and *Pfeffer* Actions each alleged that Defendant Nationwide violated the Fair Debt Collection Practices Act ("FDCPA") by sending collection letters to plaintiffs and the

class members that contained a statement to the effect of “American Express is required to file a form 1099C with the Internal Revenue Service for any cancelled debt of \$600 or more.”

Nationwide moved to dismiss the *Kaff* Complaint. Nationwide’s Motion to Dismiss was fully briefed as of May 9, 2014. On March 31, 2015, this Court entered a Memorandum and Order denying Nationwide’s Motion to Dismiss. The *Kaff*, *Jager* and *Pfeffer* actions were subsequently consolidated. On August 28, 2015 plaintiffs filed their First Amended Complaint, putting the three cases together. On September 15, 2015, plaintiffs filed their Corrected Amended Complaint.

On March 30, 2016, plaintiffs filed a motion for preliminary approval of this Class Action Settlement. On May 23, 2016, the Court entered an order, granting preliminary approval to the parties’ settlement. Subsequently, on January 12, 2017, the Court granted final approval of the settlement. The settlement is to be distributed as follows:

1. Nationwide created a \$160,000.00 class settlement fund that was distributed *equally* to class members who submitted valid claim form, and did not exclude themselves from the settlement;

2. Nationwide will pay each Class Representative a settlement for his/her individual FDCPA claims in the amount of \$1,000.00. Additionally, in recognition of Plaintiffs’ service as Class Representatives, Nationwide will pay each Class Representative an additional \$1,500.00 service award. The payments to the Class Representatives are separate and apart from the Settlement Fund described above in paragraph 1.

3. Nationwide will pay \$40,000.00 to be paid to Class Counsel for reasonable attorney’s fees and costs. The payment of Class Counsel’s attorneys’ fees is separate and apart from the Settlement Fund described above in paragraph 1.

It is important to note that the \$40,000.00 attorneys fee award in this case is being paid separately by the defendant and does not diminish the Class members' recovery. *Torres v. Toback, Bernstein & Reiss LLP*, 11-CV-1368 (VVP), 2017 WL 281878, *2 (E.D.N.Y. Jan. 23, 2017)(attorneys fees paid out of the common fund depletes the amount of the financial benefit to the class).

I. The attorney fees and costs sought by Class Counsel on behalf of the class is fair, reasonable and consistent with the prevailing market rates.

Courts in this district use the Lodestar method of calculating attorney's fees pursuant to a fee shifting statute such as the Fair Debt Collection Practices Act. *Torres* at *2 (E.D.N.Y. Jan. 23, 2017). The Lodestar calculation is the number of hours expended multiplied by the reasonable hourly rate. The fee award of \$40,000.00 is reasonable in this case as class counsel's Lodestar exceeds the amount of the fee award. Here, class counsel have expended in excess of 205 hours as of the date of this filing. Class Counsel's rates range between \$275.00 per hour and \$700.00 per hours based on various levels of experience and expertise of each attorney.

At the Edelman Firm, Tiffany N. Hardy was the attorney primarily responsible for handling the case. Ms. Hardy's rate is \$325.00 per hour and she expended over 70 hours in connection with this case. The Honorable Arthur D. Spatt approved Ms. Hardy's rate of \$325.00 per hour and the paralegal rate of \$125.00 per hour for the Edelman Firm at the Fairness Hearing in *Diaz v. Residential Credit Solutions, Inc.*, 12 CV 3781 (E.D.N.Y.) on September 29, 2014. (Exhibit A). The billing records for the Edelman Firm also reflects billing for Daniel A. Edelman and Cathleen M. Combs with rates between \$600.00 and \$700.00¹ per hour. Mr.

¹ During the four-year pendency of this case the Edelman Firm experienced a rate increase whereby the hourly rates for Daniel Edelman and Cathleen Combs were increased from \$600.00 per hour to \$700.00 per hour.

Edelman and Ms. Combs are attorneys of record in this case and did provide assistance in litigating and settling this matter. The combined hours spent by Mr. Edelman and Ms. Combs is 26.1 hours. Ms. Hardy has expended in excess of 70 hours at her rate of \$325.00.

Additionally, the Honorable Sidney I. Schenkier, Magistrate approved the rates of the Edelman Firm as fair and reasonable during proceedings on April 15, 2016 in *Sundin v. Stellar Recovery, Inc.*, 13 C 1560 (N.D. Ill) (Exhibit B).

In the *Torres v. Toback, Bernstein & Reiss LLP*, 11-CV-1368 (VVP), 2017 WL 281878, *2 (E.D.N.Y. Jan. 23, 2017) (a FDCPA case) Judge Pohorelsky approved a rate of \$400.00 per hour for class counsel as fair and reasonable. *Id.* Additionally, Class Counsel submits the Declaration of New York attorney Brian L. Bromberg in further support of the reasonableness of the Edelman firm's rates and their consistency with the prevailing market rates for litigating FDCPA cases. (Exhibit C). Mr. Bromberg is a consumer rights attorney who has been a member of the New York bar since 1992.

II. Submission of Class Counsel's Billing Records and Experience and Qualifications

In accordance with this Court's Order of February 15, 2017, Tiffany N. Hardy submits the attached declaration outlining the experience and qualifications of the Edelman Firm in litigating consumer class actions and consumer protection cases. The declarations further set forth the qualifications, experience and expertise of attorneys Daniel A. Edelman, Cathleen M. Combs and Tiffany N. Hardy. (Exhibit D). The declarations provide further detail concerning the rates charged by the Edelman firm and specific instances where such rates have been approved as fair and reasonable. Additionally, as the Edelman firm has incurred additionally time briefing other matters and responding to class members' inquiries since October 2016,

attached are updated billing records that show that the Edelman firm alone has a lodestar of \$51,112.50, far in excess of the \$40,000.00 fee award in this case.

Additionally, Maxim Maximov submits a letter outlining his experience, qualifications and expertise, as well as citations to a prior decision in support of his rate as being fair and reasonable. (Exhibit E)

Attorney Adam Fishbein will submit his billing records and additionally supplemental information as requested by this Court under separate cover.

As the attached documentation demonstrates, a fee award of \$40,000.00 is fair and reasonable.

Respectfully submitted,

s/ Tiffany N. Hardy
Tiffany N. Hardy

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CERTIFICATE OF SERVICE

I, Tiffany N. Hardy, hereby certify that on February 22, 2017, I caused to be filed the foregoing document via the CM/ECF System, which sent notification of such filing to the following parties:

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Respectfully submitted,

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